IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11895 of 2007
With
SPECIAL CIVIL APPLICATION No. 11903 of 2007
With
SPECIAL CIVIL APPLICATION No. 11905 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABU TEXTILE INDUSTRIES - Petitioner(s)
Versus
THE BRANCH MANAGER - Respondent(s)

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Appearance :
MR UTKARSH B JANI for Petitioner(s) : 1,
MR MAULIK J SHELAT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/09/2007

CAV COMMON JUDGMENT :

Rule. Mr. Maulik J Shelat, learned advocate waives service of

rule for respondent.

2. All the three petitions are closely interconnected and there is a common report of the Surveyor in respect of the properties of the petitioners of these petitions and there is common correspondence exchanged between the petitioners and respondent – insurance company, these petitions are heard together and now they are being disposed of by this common judgment. The details regarding claim made by the petitioners are not much relevant in respect of these petitions. The facts of Special Civil Application No. 11895 of 2007 alone are stated in this judgment. The facts of other petitions are more or less on the same line.

3. The petitioner has approached this Court under Article 226 of the Constitution of India to seek appropriate direction on the respondent – insurance company to release a sum of Rs.4,33,838/- in favour of the petitioner with interest with liberty to receive the same under protest by the petitioner to enable it to approach appropriate forum for claiming the balance/deficit amount towards the insurance claim.

4. The facts, in short, can be stated as under :-

4.1. The petitioner owns a factory which was duly insured with respondent – insurance company under policy No. 060103/11/01/00108 for a sum of Rs.46 lacs. Under the said policy damage to the factory in riot, etc., was covered. According to the petitioner, the said property got damaged in the communal disturbances which occurred on 28/2/2002. The factory was set

ablaze by rioting mob and it was completely gutted in the fire. Even the stock, raw material, etc., also got damaged. The petitioner intimated the loss to the insurance company on 11/3/2002 and claimed Rs.33,58,791/-. It is the say of the petitioner that in a common letter dated 22/9/2003 addressed to the group of companies of the petitioner as well as the petitioner, the respondent insurance company intimated that the petitioner's claim was treated as “no claim” in absence of required claim papers. However, it appears that later on petitioner requested respondent company to reopen the case and kept on renewing the request which never received favourable reply. Ultimately the petitioner approached the Grievance Department of the Registered Office of the respondent company and brought to its notice that claim for aggregate amount of Rs.60 lacs for the entire group of companies was pending and it was not being considered by the insurance company. It further appears that vide letter dated 30/12/2003 even the Grievance Department turned down the request of the petitioner. This constrained the petitioner to address letter dated 22/1/2004 to the Head Office of the insurance company, the Regional office of the respondent and the Insurance Regulatory Development Authority. Even thereafter, some correspondence ensued between the petitioner and the Head Office of the respondent company. It appears that in the meanwhile, the survey of the damage was also carried out and the Surveyor had submitted report to the insurance company. Despite that the say of the insurance company remained the same that the petitioner had not submitted relevant data or record for

considering the claim. It also appears that the Surveyor submitted the report dated 27/4/2005 to the insurance company which was forwarded to the petitioner on 19/10/2006. According to the petitioner, it received intimation that against the amount of Rs.33,58,791/- as claimed by it, the insurance company was willing to pay a sum of Rs.3,90,071/-. The petitioner lodged its protest against the offer made by the insurance company. It is also the say of the petitioner that after much persuasion the respondent company finally agreed to reconsider the entire survey report and assured the petitioner in a meeting arranged on 5/1/2007 at the Regional Office of the respondent company, wherein the loss caused to the petitioner and its group of companies was orally worked out. It is the say of the petitioner that thereafter, by forwarding settlement intimation voucher dated 24/3/2007 to the petitioner, the respondent company expressed the willingness to settle the claim for an amount of Rs.4,33,838/-. Ultimately when the petitioner thought that it would have to resort to the legal remedy, it made a request to respondent company that at least amount of Rs.4,33,838/- be released in its favour which can be accepted by the petitioner under protest. It appears that the respondent company has taken a stand that unless the petitioner agreed to receive the amount unconditionally, it would not release the same. Hence, the petition.

5. I have heard Mr. Utakarsh B Jani, learned advocate for the petitioners and Mr. Maulik J Shelat, learned advocate for respondent company. It is submitted by Mr. Jani that one cannot come across a more clear case of

arbitrariness and high-handedness of a statutory body than the present case. It is his submission that when there is no dispute that the policy in question was in existence covering the damage to the factory of the petitioner and when the factory was actually destroyed in the communal disturbances, it was the duty of insurance company to satisfy the claims of the petitioners and reimburse the loss suffered by them. He has submitted that instead thereof the respondent company has not only not considered the claims of the petitioners but after much persuasion it had agreed to pay sum of Rs.4,33,838/-, Rs.8,17,355/- and Rs.4,97,514/- only towards full and final settlement of the entire claims. According to Mr. Jani, this is nothing but a mockery of the genuine claim of the petitioners. He has submitted that as if this is not enough, the respondent – insurance company is not prepared to part with the agreed amount unless it is received by the petitioner unconditionally and thereby tried to pin-down the petitioners and not allowing it to resort to legal remedies available to it.

5.1. As against that, Mr. Maulik Shelat has submitted that the petitioners' claims were repudiated on 29/3/2003 and, therefore, now the petitioners cannot approach any forum since the claim will be barred by limitation. It is his submission that if the insurance company is required to make the payment now allowing the petitioners to receive it under protest, it will extend the period of limitation and revive the right in favour of the petitioners which has already extinguished. He has submitted that the insurance company was within its bounds to refuse the claim of the petitioners

because the relevant data and documents were not produced by the petitioners to support their claim. In reply to the submissions of Mr. Shelat, Mr. Jani has drawn my attention to several correspondence and has submitted that the issue with regard to settlement of the claim had remained alive till March 2007 when the offer was made to settle the claim for Rs.4,33,838/-. Therefore, there is no question of the period of limitation getting over. Both the learned advocates have cited decisions to support their submissions with regard to limitation.

6. I have perused the record of the petition and I have also carefully considered the submissions of all the learned advocates. The sole question for my consideration is whether the respondent – insurance company is justified in refusing to pay to the petitioner the agreed sum of Rs.4,33,838/- unless the petitioner unconditionally accepted it and thereby foreclosing the doors of the petitioner to approach the proper forum to recover the balance claim. It is true that by letter dated 29/3/2003 the petitioners were intimated by the respondent company that since they had produced no documents either to the Surveyor or to the insurance company for completing the survey, their claims were repudiated. This is the case pleaded by the respondent company in its affidavit-in-reply. Copy of letter dated 29/3/2003 is also annexed to the affidavit. However, thereafter the things did not come to standstill, but a long drawn correspondence, mostly from the side of the petitioners, ensued which intermittently received some response from the respondent company. It is the case of the petitioners that respondent was not justified in saying that necessary

documents were not supplied to the Surveyor nor to the insurance company and they tried to impress upon the insurance company that the claims were legitimate and the petitioners had complied with all the requirements. The record shows that after much persuasion and after the Surveyor carried out the survey and submitted the report dated 27/4/2005, respondent company showed the willingness to pay a sum of Rs.3,90,071/-. It also appears that during the year 2004 the insurance company had been calling upon the petitioners to furnish the full particulars of the claim and the policy details thereof to enable the insurance company to proceed in the matter. By letters dated 28/3/2006 the petitioners had been intimated by the insurance company with regard to their pending riot claims that the matter was under review with the Grievance Committee and it would let the petitioners know in due course of time. It also further appears that the decision was reviewed and by settlement intimation voucher received by the petitioners dated 24/3/2007 the amount was increased to Rs.4,33,838/-. Thus, even after 29/3/2003 the issue with regard to settlement of the claim appears to have remained alive and in March 2007 the last offer of the insurance company has been received by the petitioner. It, therefore, prima-facie appears that the submission of Mr. Shelat with regard to expiry of the period of limitation is not well founded. Mr. Jani has placed reliance on the decision of the Apex Court rendered in the case of Lata Construction v/s. Dr. Rameshchandra Ramniklal Shah reported in (2000) 1 S.C.C. p.586. It is held by the Apex Court in the said decision that since the right under the agreement

had not been given up and the appellant of that case was constantly under the obligation to provide a flat to the respondents and deliver possession thereof to them, the cause of action had to be treated as continuing cause of action and, therefore, the claim was not beyond time. On the basis of the said observation, it is submitted by Mr. Jani that the insurance company was under the obligation under the contract of insurance to reimburse the damage and the petitioner had never given up its claim and constantly pursued it with the respondent company; therefore, it can never be said that the period of limitation has expired long back. He has also placed reliance on the decision of the Madhya Pradesh High Court rendered in the case of Union of India v/s. M.P. Electricity Board reported in AIR 1995 M P p. 73. In the said decision it is held that the period of limitation would stand extended on the principle of acknowledgment of the liability. Mr. Jani has submitted that with the issue still remaining under consideration and review of the respondent insurance company and in the month of March 2007 respondent company increasing the amount of agreed payment from Rs.3,90,071/- to Rs.4,33,838/-, there is acknowledgment of the liability and the period of limitation will stand extended. There is some substance in the submissions of Mr. Jani based on the facts of the present case and it prima-facie appears that it is possible for the petitioner to contend that the period of limitation has not expired.

Mr. Jani has also placed reliance on the decision of the Apex Court rendered in the case of Transport Corporation of India Ltd., v/s. Veljan

Hydrair Ltd., reported in (2007) 3 S.C.C. p.142 and in particular the following paragraph :

> "12. In this case, the consignment was entrusted to the appellant on 10/5/1996. On 8/11/1996, the respondent instructed the appellant to rebook the consignment. On 8/8/1998, 13/10/1998, 7/11/1998 and 8/12/1998, the respondent demanded delivery. By letters dated 15/12/1998, 21/6/1999 and 3/7/1999, the appellant assured the respondent that it was in the process of locating the goods and requested the respondent to wait and assured that it will inform about the status. Thereafter the appellant did not inform the status. The complaint has been filed within two years from the date of receipt of the said letter dated 3/7/1999 and is in time. In fact in view of the request of the appellant to the respondent to wait till the consignment was traced, the limitation for an action would not start to run until there was a communication from the appellant, either informing about the loss or expressing its inability to deliver or refusal to deliver, or until the respondent makes a demand for delivery or payment of value of the consignment after waiting for a reasonable period and there is non-compliance. Therefore, the complaint is not barred under Section 24-A of the CP Act."

There is yet another decision which is pressed into service by Mr. Jani, which is of the Apex Court rendered in the case of Lala Bal Mukand [Dead] by L.Rs. V/s. Lajwanti reported in AIR 1975 S.C. p. 1089 and has submitted that while considering the aspect of limitation liberal view should be taken. He has placed reliance on para. 19 of the decision, which is as under :-

> "19. We do not wish to encumber this judgment with a detailed

discussion of all the citations and the reasoning advanced therein in support of one or the other view. It will be sufficient to say that upon the language of Section 12 (2) both the constructions are possible, but the one adopted by the majority of the courts, appears to be more consistent with justice and good sense. The Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A Court ought to avoid an interpretation upon a statute of Limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the legislature."

6.1. As against that, Mr. Shelat has placed reliance on the decision delivered by me in Special Civil Application No. 17723 of 2003 dated 20/6/2007 whereby in the case where the insurance company had asked the petitioner to accept the amount unconditionally, this Court directed the petitioner to approach the proper forum and dismissed the petition. However, in the said case there was a specific contention of the insurance company with regard to expiry of limitation and the petitioner was not at all in a position to controvert it. In such circumstances, it was necessary to reject the contention of the petitioner, which otherwise would have revived the period of limitation and prejudiced the case of the insurance company. Here that is not the case as it prima-facie appears.

Mr. Shelat has further submitted that unless there is unqualified acknowledgment of the liability the period of limitation does not get extended

from the date of such acknowledgment. He has placed reliance on the decision of the Apex Court rendered in the case of Syndicate Bank v/s. R. Veeranna reported in (2003) 2 S.C.C. p. 15, wherein it is held that only unqualified acknowledgment of the liability causes fresh period of limitation to begin and also gives plaintiff a cause of action to base his claim on. It is his submission that there is no such unqualified acknowledgment of the liability in the present case and, therefore, fresh period of limitation will not begin even while taking into consideration latest communication received by the petitioners from the respondent – company.

7. Considering the aforesaid decisions and the facts, it clearly appears that the petitioner has arguable case with regard to period of limitation and there is prima-facie probability of the petitioners succeeding on the question of limitation. However, I will not express any definite opinion on this issue since it is for the appropriate forum before which the petitioners intend to file proceedings to examine the issue in detail and give appropriate finding thereon. I have simply made the aforesaid discussion to draw the distinction between the facts in the case of Kisan Pulse Millsingh Sisodiya v/s. United India Insurance Co. Ltd., in Special Civil Application No. 17723 of 2003 and the facts of the cases on hand. The distinction between the two sets of facts is already noted above and I do not intend to repeat it here.

8. The next question is whether in the facts and circumstances of the case the relief claimed by the petitioners can be granted. Mr. Jani has placed

reliance on the order passed by the learned Single Judge of this Court in Special Civil Application No. 418 of 2003 dated 4/2/2003 wherein, in the similar circumstances it has been held as under :-

> "Heard the learned counsel for the parties.
>
> Accordingly, this application is allowed. The petitioner is permitted to accept the insurance amount of cheque which is to be released by the concerned authority of the respondent, under protest within three weeks from today and after receiving that amount of the cheque, the petitioner would be at liberty to take legal recourse available under the law by way of filing appropriate civil suit proceedings before the appropriate forum, without prejudice to rights and contentions of the parties.
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> In view of the above, the present petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs."

Similarly the learned Single Judge of this Court has given a decision in the case of Hotel Royal v/s. Branch Manager dated 09/12/2004 in Special Civil Application No. 18066 of 2003. In the said case, after keeping in view the offer made by the insurance company with regard to payment of particular amount, the Court passed following direction :-

> "Under the circumstances, the respondent Insurance Company is directed to make the payment of Rs.3,38,979/- to the petitioner within a period of 15 days from the date of receipt of the writ of this order. The petitioner may accept the said amount under the protest subject to rights available to the petitioner to approach before the appropriate forum for rest of the claim."

9. It may be noted here that at the very first instance the case of the

insurance company was that the petitioners had failed to supply the necessary documents and the claim papers to the Surveyor and, therefore, it turned down the claim totally in September 2003. But thereafter, in view of the correspondence and the fresh survey report, etc., respondent company agreed to sum of Rs.3,90,071/-, which was subsequently raised to Rs.4,33,838/- in March 2007. Thus, there is ample scope for the petitioners to raise proper dispute and gain success in proving their claim in support of their case before the appropriate forum. This is a valuable right given to the petitioners under law and the respondent – company cannot curtail or deprive the petitioner of such statutory right by denying to pay the admitted amount unless the petitioners gave an undertaking that they would accept the amount unconditionally and will not resort to any remedy including the legal statutory remedy to obtain the balance amount of claim. In the aforesaid set of facts and circumstances, the respondent – company is directed to pay to the petitioners of S.C.A. Nos. 11895, 11903 and 11905 of 2007 amounts of Rs.4,33,838/-, Rs.8,17,355/- and Rs.4,97,514/- respectively and the petitioners will be at liberty to accept the same under protest keeping all their other rights and recourses open to approach appropriate forum for obtaining balance amount of the claims.

10. The result is that these petitions are allowed with no order as to costs. Rule made absolute.

[Akshay H Mehta, J.]

* Pansala.